

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Interconnection and Resale Obligations)

Pertaining to)

Commercial Mobile Radio Services)

CC Docket No. 94-54

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PETITION FOR PARTIAL RECONSIDERATION

AT&T Corp. ("AT&T"), by its attorneys and pursuant to 47 C.F.R. § 1.429, hereby petitions for partial reconsideration of the Commission's Order in the above-captioned proceeding.^{1/} In particular, AT&T requests reconsideration of the Commission's decision not to limit the resale requirement to services regulated by Title II of the Communications Act. AT&T also seeks reconsideration of the Commission's failure to exempt from the resale obligation cellular and PCS data-only services while explicitly excluding "non-covered" SMR operations.

I. THE COMMISSION SHOULD LIMIT CMRS PROVIDERS' RESALE OBLIGATIONS TO COMMON CARRIER SERVICES

In its comments, AT&T stated that there was no need for a separate resale rule for CMRS providers when the Commission could rely instead on Section 202(a)'s

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^{1/} In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, First Report and Order, FCC 96-163 (released July 12, 1996) ("Order").

nondiscrimination requirement.^{2/} While the Commission did not adopt this proposal, it concluded that the resale rule "should be narrowly tailored to apply only to those services where, due to competitive conditions, its application will confer important benefits, and only for so long as competitive conditions continue to render application of the resale rule necessary."^{3/} The Commission noted that the resale requirement imposes costs on carriers, "which should not be imposed unless clearly warranted."^{4/}

Despite this stated desire to construe narrowly the wireless resale obligation, the Commission held that CMRS providers are obligated to offer resellers the same bundled packages of services and customer premises equipment ("CPE") that they offer to other large customers.^{5/} Given that the Commission's existing cellular resale rule applies only to basic communications services,^{6/} the Commission did not dispute that the provision of CPE alone would be excluded from the resale requirement. Nevertheless, the Commission concluded that, if sold in conjunction with basic common carrier services, CPE must be

^{2/} Comments of AT&T Corp. at 27 ("AT&T Comments"); Reply Comments of AT&T Corp. at 13. The recent enactment of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996) ("1996 Act"), which imposes resale obligations only on local exchange carriers, lends support to this position. Compare 47 U.S.C. § 251(a) with 47 U.S.C. § 251(b)(5). Significantly, CMRS providers are not local exchange carriers. See 47 U.S.C. 153(26).

^{3/} Order at ¶ 14.

^{4/} Id.

^{5/} Id. at ¶ 31.

^{6/} See Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Notice of Proposed Rule Making and Order, 6 FCC Rcd 1719 (1991) (cellular carriers may not impose restrictions on the resale of "common carrier domestic public switched network services, including MTS and WATS switched voice services"); 47 C.F.R. § 22.901(e).

made available for resale. As justification for this requirement, the Commission stated that it is concerned that a contrary ruling "would potentially offer carriers an easy means to circumvent the rule."^{7/}

It is not evident how exempting CPE and non-common carrier services from the resale requirement would cause this outcome. As AT&T acknowledged in its comments, even if the CMRS provider could withhold the provision of CPE to resellers, it would still be required to offer the service component for resale.^{8/} Thus, resellers would be able to purchase all telecommunications services offered by CMRS providers and would be precluded only from demanding a right to equipment and non-regulated services, to which the resale rule does not attach. This will leave resellers ample room to compete against the common carrier services of facilities-based CMRS providers.

Expanding the scope of the resale requirement also is unnecessary to promote competition in the offering of bundled packages. Based on an extensive record the Commission has found "that the cellular CPE market is extremely competitive, both locally and nationally, and that this competition has resulted in the widespread availability of cellular CPE."^{9/} Similarly, over the past decade, there has been a rapid expansion in the availability of enhanced services.^{10/} This competitive availability of CPE and non-Title II services

^{7/} Order at ¶ 31.

^{8/} AT&T Comments at 26 n.56.

^{9/} See, e.g., Bundling of Cellular Customer Premises Equipment and Cellular Service, Report and Order, 7 FCC Rcd 4028, 4029 (1992).

^{10/} See, e.g., Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, Notice of Proposed Rulemaking, 10 FCC Rcd. 8360, 8384-8385 (1995).

gives resellers the option of creating their own packages of CPE, enhanced services, and common carrier services by acquiring equipment and enhanced services from the same or different sources used by facilities-based carriers.

II. THE COMMISSION HAS FAILED TO EXPLAIN ITS DECISION TO TREAT LIKE SERVICES DIFFERENTLY FOR PURPOSES OF THE RESALE RULE

In the Order, the Commission determined that the resale obligation would apply only to cellular, broadband PCS and "covered SMR providers."^{11/} It stated that other SMR licensees -- those "offering only data, one-way, or stored voice services on an interconnected basis" -- are not subject to the CMRS resale rule.^{12/} The non-covered SMR exclusion was based on the Commission's conclusion that the costs of applying the resale policy to these operations would outweigh the benefits.^{13/}

The Commission's decision will place AT&T at an extreme competitive disadvantage. AT&T provides data services over its cellular spectrum that compete directly with, and are essentially the same as, those provided by SMR operators.^{14/} For instance, the licensed data providers, RAM Mobile Data USA Limited Partnership ("RAM Mobile") and Advanced Radio Data Integrated Systems, Inc. ("Ardis") offer mobile data services on the 800 - 900

^{11/} Order at ¶ 17.

^{12/} Id. at ¶ 19.

^{13/} Id.

^{14/} AT&T's circuit data service transmits data from devices, such as fax machines, and laptop computers over AT&T's cellular system infrastructure. AT&T's packet data service allows the transmission of data over the cellular spectrum through an entirely separate infrastructure, which is not connected to the public switched network. AT&T plans to offer similar services on its PCS spectrum.

MHz SMR spectrum that is interconnected with the public switched telephone network.^{15/}

Data services are also being offered on an unlicensed basis and, like non-covered SMR services, are not subject to the resale requirement.^{16/} In fact, the data services provided by the SMR and unlicensed operators and AT&T are viewed by customers as substitutable and competitive with each other.^{17/} Accordingly, there is no justification for exempting the data offerings of SMR and unlicensed operators from the resale requirement while forcing AT&T to make its data services available to resellers simply because they are provided over different spectrum.^{18/} If the resale obligation is unduly burdensome for these SMR and unlicensed operations, it is likewise unduly burdensome as applied to cellular and PCS data services.

^{15/} BellSouth Wireless, Inc. Request for Waiver of the CMRS Spectrum Aggregation Limit in Section 20.6 of the Commission's Rules at 3-4, 7 (filed July 30, 1996 ("BellSouth Waiver Request").

^{16/} BellSouth Wireless, Inc. (BellSouth), which holds a partnership interest in RAM Mobile, has expressed the view that RAM Mobile's data service is excluded from application of the Commission's CMRS resale obligations under the non-covered SMR exclusion. BellSouth Waiver Request at 7.

^{17/} RAM Mobile is directly competing with AT&T for customers with respect to mobile professional, remote monitoring, field service, public safety, and transportation applications. For example, RAM Mobile was awarded contracts over AT&T for data service Roadway Package Service trucks and for Washington Natural Gas meters. Ardis is directly competing with respect to e-mail type services.

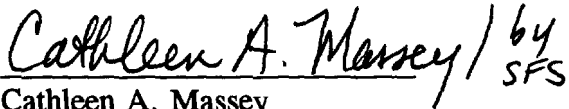
^{18/} Garrett v. FCC, 513 F.2d 1056, 1060 (D.C. Cir. 1975); Melody Music, Inc. v. FCC, 345 F.2d 730, 732-733 (D.C. Cir. 1965) (Commission has duty to treat similarly situated entities in a like manner); see also McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993).

CONCLUSION

For the foregoing reasons, the Commission should reconsider its decision not to limit a CMRS provider's resale obligation to common carrier services. The Commission should also amend its rules to exempt cellular and PCS data services, in addition to non-covered SMR services, from the resale requirement

Respectfully submitted,

AT&T Corp.

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August 23, 1996
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CERTIFICATE OF SERVICE

I, Tanya Butler, do hereby certify that on this 23rd day of August, 1996, I caused a copy of the foregoing "Petition for Partial Reconsideration" to be delivered by messenger to the following:

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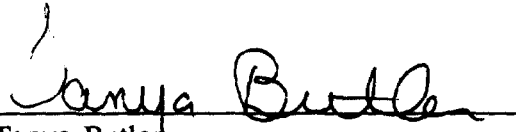
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